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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 NEIGHBORHOOD NEUROPATHY
11 CENTER OF RENO, LLC, individually
and on behalf of a class of similarly
situated individuals.

Plaintiff,

V.

MEDRISK, LLC, a Delaware limited liability company,

Defendant.

Case No. 3:19-cv-00619-LRH-WGC

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S CLASS ACTION
COMPLAINT**

MEDRISK, LLC, a Delaware limited liability company,

Defendant.

Defendant MedRisk, LLC (“MedRisk”), by its undersigned counsel, answers Plaintiff’s Complaint (the “Complaint”) as follows:

PARTIES

20 1. MedRisk currently lacks knowledge or information sufficient to form a
21 belief about the truth of the allegations set forth in paragraph 1 and therefore, denies
22 them.

23 ||| 2. MedRisk admits the allegations set forth in Paragraph 2.

JURISDICTION & VENUE

25 3. The allegations in paragraph 3 constitute legal conclusions to which no
26 response is required. To the extent a response is required, MedRisk admits only that
27 Plaintiff asserts claims based on federal laws. To the extent said paragraph is deemed
28 to contain any affirmative allegations against MedRisk, MedRisk denies them.

1 4. MedRisk does not challenge personal jurisdiction for purposes of this
 2 action only. To the extent said paragraph is deemed to contain any affirmative
 3 allegations against MedRisk, MedRisk denies them.

4 5. MedRisk does not challenge venue for purposes of Plaintiff's individual
 5 claim only, but denies that MedRisk has any liability to Plaintiff or anyone it purports
 6 to represent in this action.

7 COMMON ALLEGATIONS OF FACT

8 6. Paragraph 6 contains no affirmative allegations against MedRisk. To the
 9 extent said paragraph is deemed to contain any affirmative allegations against
 10 MedRisk, MedRisk denies them.

11 7. The allegations in paragraph 7 constitute legal conclusions to which no
 12 response is required. To the extent a response is required, MedRisk denies paragraph
 13 7 of the Complaint.

14 8. The allegations in paragraph 8 constitute legal conclusions to which no
 15 response is required. To the extent a response is required, MedRisk denies paragraph
 16 8 of the Complaint.

17 9. Paragraph 9 contains no affirmative allegations against MedRisk. To the
 18 extent said paragraph is deemed to contain any affirmative allegations against
 19 MedRisk, MedRisk denies them. Moreover, the allegations in said paragraph
 20 constitute legal conclusions to which no response is required.

21 10. MedRisk denies that any class should be certified in this action and
 22 denies that this action is appropriate for class treatment. To the extent a further
 23 response is required, MedRisk denies the allegations contained therein.

24 11. The allegations in paragraph 11 constitute legal conclusions to which no
 25 response is required. To the extent a response is required, MedRisk denies paragraph
 26 11 of the Complaint.

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FACTS SPECIFIC TO PLAINTIFF

12. MedRisk denies the allegations contained in paragraph 12 of the Complaint.

13. MedRisk denies the allegations contained in paragraph 13 of the Complaint.

14. MedRisk denies the allegations contained in paragraph 14 of the Complaint.

15. MedRisk denies the allegations contained in paragraph 15 of the Complaint.

16. MedRisk denies the allegations contained in paragraph 16 of the Complaint.

17. MedRisk denies the allegations contained in paragraph 17 of the Complaint.

18. Paragraph 18 contains no affirmative allegations against MedRisk. To the extent said paragraph is deemed to contain any affirmative allegations against MedRisk, MedRisk currently lacks knowledge or information sufficient to form a basis about the truth of the allegations set forth in paragraph 18 and therefore denies them.

19. The allegations in paragraph 19 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 19 of the Complaint.

CLASS ACTION ALLEGATIONS

20. MedRisk denies that any class should be certified in this action and denies that this action is appropriate for class treatment. To the extent a further response is required, MedRisk denies the allegations contained therein.

21. Paragraph 21 asserts legal conclusions to which no answer is required. To the extent a response is required, MedRisk denies that any class should be certified in this action and denies that this action is appropriate for class treatment. To the extent a further response is required, MedRisk denies the allegations contained

1 therein.

2 22. Paragraph 22 asserts legal conclusions to which no answer is required.
3 To the extent a response is required, MedRisk denies that any class should be certified
4 in this action and denies that this action is appropriate for class treatment. To the
5 extent a further response is required, MedRisk denies the allegations contained
6 therein.

7 23. Paragraph 23 asserts legal conclusions to which no answer is required.
8 To the extent a response is required, MedRisk denies that any class should be certified
9 in this action and denies that this action is appropriate for class treatment. To the
10 extent a further response is required, MedRisk denies the allegations contained
11 therein.

12 a. Paragraph 23(a) asserts legal conclusions to which no answer is
13 required. To the extent a response is required, MedRisk denies that any class should
14 be certified in this action and denies that this action is appropriate for class treatment.
15 To the extent a further response is required, MedRisk denies the allegations contained
16 therein.

17 b. Paragraph 23(b) asserts legal conclusions to which no answer is
18 required. To the extent a response is required, MedRisk denies that any class should
19 be certified in this action and denies that this action is appropriate for class treatment.
20 To the extent a further response is required, MedRisk denies the allegations contained
21 therein.

22 c. Paragraph 23(c) asserts legal conclusions to which no answer is
23 required. To the extent a response is required, MedRisk denies that any class should
24 be certified in this action and denies that this action is appropriate for class treatment.
25 To the extent a further response is required, MedRisk denies the allegations contained
26 therein.

27 d. Paragraph 23(d) asserts legal conclusions to which no answer is
28 required. To the extent a response is required, MedRisk denies that any class should

1 be certified in this action and denies that this action is appropriate for class treatment.
2 To the extent a further response is required, MedRisk denies the allegations contained
3 therein.

4 e. Paragraph 23(e) asserts legal conclusions to which no answer is
5 required. To the extent a response is required, MedRisk denies that any class should
6 be certified in this action and denies that this action is appropriate for class treatment.
7 To the extent a further response is required, MedRisk denies the allegations contained
8 therein.

9 24. Paragraph 24 asserts legal conclusions to which no answer is required.
10 To the extent a response is required, MedRisk denies that any class should be certified
11 in this action and denies that this action is appropriate for class treatment. To the
12 extent a further response is required, MedRisk denies the allegations contained
13 therein.

14 25. Paragraph 25 asserts legal conclusions to which no answer is required.
15 To the extent a response is required, MedRisk denies that any class should be certified
16 in this action and denies that this action is appropriate for class treatment. To the
17 extent a further response is required, MedRisk denies the allegations contained
18 therein.

19 26. Paragraph 26 asserts legal conclusions to which no answer is required.
20 To the extent a response is required, MedRisk denies that any class should be certified
21 in this action and denies that this action is appropriate for class treatment. To the
22 extent a further response is required, MedRisk denies the allegations contained
23 therein.

24 27. Paragraph 27 asserts legal conclusions to which no answer is required.
25 To the extent a response is required, MedRisk denies that any class should be certified
26 in this action and denies that this action is appropriate for class treatment. To the
27 extent a further response is required, MedRisk denies the allegations contained
28 therein.

1 a. Paragraph 27(a) asserts legal conclusions to which no answer is
2 required. To the extent a response is required, MedRisk denies that any class should
3 be certified in this action and denies that this action is appropriate for class treatment.
4 To the extent a further response is required, MedRisk denies the allegations contained
5 therein.

6 b. Paragraph 27(b) asserts legal conclusions to which no answer is
7 required. To the extent a response is required, MedRisk denies that any class should
8 be certified in this action and denies that this action is appropriate for class treatment.
9 To the extent a further response is required, MedRisk denies the allegations contained
10 therein.

11 c. Paragraph 27(c) asserts legal conclusions to which no answer is
12 required. To the extent a response is required, MedRisk denies that any class should
13 be certified in this action and denies that this action is appropriate for class treatment.
14 To the extent a further response is required, MedRisk denies the allegations contained
15 therein.

16 d. Paragraph 27(d) asserts legal conclusions to which no answer is
17 required. To the extent a response is required, MedRisk denies that any class should
18 be certified in this action and denies that this action is appropriate for class treatment.
19 To the extent a further response is required, MedRisk denies the allegations contained
20 therein.

21 e. Paragraph 27(e) asserts legal conclusions to which no answer is
22 required. To the extent a response is required, MedRisk denies that any class should
23 be certified in this action and denies that this action is appropriate for class treatment.
24 To the extent a further response is required, MedRisk denies the allegations contained
25 therein.

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CAUSE OF ACTION

Violation of 47 U.S.C. § 227, et seq.

(On behalf of Plaintiff and the MedRisk Junk Fax Class)

28. MedRisk incorporates herein by reference its responses to the prior paragraphs.

29. Paragraph 29 contains no affirmative allegations against MedRisk. To the extent said paragraph is deemed to contain any affirmative allegations against MedRisk, MedRisk denies them. Moreover, the allegations in said paragraph constitute legal conclusions to which no response is required.

30. Paragraph 30 contains no affirmative allegations against MedRisk. To the extent said paragraph is deemed to contain any affirmative allegations against MedRisk, MedRisk denies them. Moreover, the allegations in said paragraph constitute legal conclusions to which no response is required.

31. The allegations in paragraph 31 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 31 of the Complaint.

32. Paragraph 32 contains no affirmative allegations against MedRisk. To the extent said paragraph is deemed to contain any affirmative allegations against MedRisk, MedRisk denies them. Moreover, the allegations in said paragraph constitute legal conclusions to which no response is required.

33. Paragraph 33 contains no affirmative allegations against MedRisk. To the extent said paragraph is deemed to contain any affirmative allegations against MedRisk, MedRisk denies them. Moreover, the allegations in said paragraph constitute legal conclusions to which no response is required.

a. Paragraph 33(a) contains no affirmative allegations against

1 MedRisk. To the extent said paragraph is deemed to contain any affirmative
2 allegations against MedRisk, MedRisk denies them. Moreover, the allegations
3 in said paragraph constitute legal conclusions to which no response is
4 required.

5 b. Paragraph 33(b) contains no affirmative allegations against
6 MedRisk. To the extent said paragraph is deemed to contain any affirmative
7 allegations against MedRisk, MedRisk denies them. Moreover, the allegations
8 in said paragraph constitute legal conclusions to which no response is
9 required.

10 c. Paragraph 33(c) contains no affirmative allegations against
11 MedRisk. To the extent said paragraph is deemed to contain any affirmative
12 allegations against MedRisk, MedRisk denies them. Moreover, the allegations
13 in said paragraph constitute legal conclusions to which no response is
14 required.

15 34. Paragraph 34 contains no affirmative allegations against
16 MedRisk. To the extent said paragraph is deemed to contain any affirmative
17 allegations against MedRisk, MedRisk denies them. Moreover, the allegations
18 in said paragraph constitute legal conclusions to which no response is
19 required.

20 35. The allegations in paragraph 35 constitute legal conclusions to
21 which no response is required. To the extent a response is required, MedRisk
22 denies paragraph 35 of the Complaint.

23 36. The allegations in paragraph 36 constitute legal conclusions to
24 which no response is required. To the extent a response is required, MedRisk
25 denies paragraph 36 of the Complaint.

26 37. Paragraph 37 contains no affirmative allegations against MedRisk.
27 To the extent said paragraph is deemed to contain any affirmative allegations
28 against MedRisk, MedRisk denies them. Moreover, the allegations in said

paragraph constitute legal conclusions to which no response is required.

38. The allegations in paragraph 28 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 38 of the Complaint.

39. The allegations in paragraph 39 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 39 of the Complaint.

40. The allegations in paragraph 40 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 40 of the Complaint.

41. The allegations in paragraph 41 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 41 of the Complaint.

42. The allegations in paragraph 42 constitute legal conclusions to which no response is required. To the extent a response is required, MedRisk denies paragraph 42 of the Complaint.

PRAYER FOR RELIEF

Answering the Prayer for Relief and each subparagraph therein, MedRisk denies the allegations and any implication that Plaintiff's allegations have merit, that Plaintiff is entitled to any relief whatsoever and/or that that any class should be certified in this action or that this action is appropriate for class treatment.

JURY DEMAND

Answering the request for trial by jury of all claims, MedRisk admits that Plaintiff requests a trial by jury.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it otherwise lies with Plaintiff, MedRisk, as separate and distinct affirmative defenses to the Complaint and all the claims alleged therein, alleges as follows on information and belief:

1 **FIRST AFFIRMATIVE DEFENSE**

2 The Complaint, and each purported claim alleged therein, fails to set forth facts
 3 sufficient to state a claim against MedRisk.

4 **SECOND AFFIRMATIVE DEFENSE**

5 Plaintiff and any person Plaintiff purports to represent are barred, in whole or
 6 in part, from maintaining the alleged claims to the extent Plaintiff and any person
 7 Plaintiff purports to represent consented to, ratified, or acquiesced in all of the alleged
 8 acts or omissions of which they complain.

9 **THIRD AFFIRMATIVE DEFENSE**

10 The Complaint is barred, in whole or in part, by the conduct, actions and
 11 inactions of Plaintiff, as well as the conduct, action and inactions of any person he
 12 purports to represent, which amount to and constitute an estoppel of the claims and
 13 any relief sought thereby.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, by the conduct, actions and
 16 inactions of Plaintiff, as well as the conduct, action and inactions of any person Plaintiff
 17 purports to represent, which amount to and constitute a waiver of any right or rights
 18 Plaintiff or any person Plaintiff purports to represent may or might have in relation to
 19 the matters alleged in the Complaint.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 The Complaint is barred from recovery by the doctrine of laches because
 22 Plaintiff and any person Plaintiff purports to represent knew of the purported acts or
 23 omissions and were fully aware of their rights against MedRisk (if any), but
 24 nevertheless inexcusably and unreasonably delayed in asserting those rights to the
 25 prejudice of MedRisk.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 To the extent that Plaintiff and any person Plaintiff purports to represent has
 28 suffered any damage as a result of the matters alleged in the Complaint, Plaintiff and

1 any person Plaintiff purports to represent failed to mitigate those damages and the
 2 claims therefore are barred, in whole or in part.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 The Complaint, and each claim and cause of action set forth therein, is barred,
 5 in whole or in part, because Plaintiff and any person Plaintiff purports to represent
 6 suffered no injury, actual damages, or concrete and/or particularized injury-in-fact, as
 7 a result of any act or practice of MedRisk and, therefore, lacks standing to assert a
 8 claim.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The Complaint is barred in whole or in part by the applicable statute of
 11 limitations including, without limitation, 28 U.S.C. § 1658.

12 **NINTH AFFIRMATIVE DEFENSE**

13 47 U.S.C. § 227, *et seq.*, including, but not limited to, its provision for statutory
 14 damages of up to \$1500 per fax, violates the First, Fourth, and Fourteenth
 15 Amendments of the United States Constitution.

16 **TENTH AFFIRMATIVE DEFENSE**

17 Plaintiff and any person Plaintiff purports to represent is precluded from any
 18 recovery for a willful and knowing violation of the JFPA because any such violation
 19 (which MedRisk denies occurred) would not have been willful or knowing.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 The claims alleged by Plaintiff and any person Plaintiff purports to represent
 22 are subject to a setoff and/or recoupment.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The Complaint is barred to the extent Plaintiff and any person Plaintiff purports
 25 to represent is a member of a class action and did not properly opt out of the class.
 26 Accordingly, the Complaint is barred by the doctrines of res judicata and/or collateral
 27 estoppel.

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THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were not proximately or legally caused by any of the actions of MedRisk.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff or any member of the class communicated with MedRisk unlawfully, deceptively, or in bad faith, such conduct bars Plaintiff's recovery and recovery of any person Plaintiff purports to represent in this case.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff and any person Plaintiff purports to represent is precluded from any recovery in that damages, if any, were the direct and proximate result of the independent, intervening, negligent, and/or unlawful conduct of independent third parties and/or their agents, and not any act or omission on the part of MedRisk.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff and any person Plaintiff purports to represent are barred, in whole or in part, from maintaining the alleged claims to the extent Plaintiff and any person Plaintiff purports to represent provided prior express consent within the meaning of the JFPA for all faxes allegedly sent by MedRisk. Moreover, consent is an inherently individualized issue that is not amenable to class-wide adjudication.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff and any person Plaintiff purports to represent has an adequate remedy at law and no basis exists for the grant of equitable or injunctive relief.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and the claims of others alleged to be members of the purported class are barred by the doctrine of unclean hands.

NINETEENTH AFFIRMATIVE DEFENSE

MedRisk specifically denies that it acted with any knowledge, willfulness, oppression, fraud, or malice towards Plaintiff and/or others alleged to be members of the purported class.

TWENTIETH AFFIRMATIVE DEFENSE

Any harm alleged in the Complaint can be attributed to several causes, and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The claims alleged by Plaintiff and any person Plaintiff purports to represent fail because the faxes at issue were informational, and not advertising.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks to bring this Complaint on behalf of a class, this action cannot be maintained as a class action because, *inter alia*, Plaintiff does not and cannot satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

TWENTY-THIRD AFFIRMATIVE DEFENSE

MedRisk reserves its right to compel arbitration, pursuant to the applicable and relevant agreement.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

MedRisk expressly reserves the right to assert such other and further affirmative defenses as may be appropriate, based on its ongoing investigation and/or documents and information obtained from Plaintiff.

WHEREFORE, MedRisk requests the following relief:

20 1. That Plaintiff's Complaint be dismissed with prejudice;
21 2. That Plaintiff take nothing by virtue of the Complaint;
22 3. That judgment be entered in favor of MedRisk;
23 4. That the Court award MedRisk its fees, expenses, and costs to the full
24 extent permitted by law; and

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5. That the Court award such other relief as is just and proper under the circumstances.

DATED this 2nd day of December, 2019.

BALLARD SPAHR LLP

By: /s/ Joel Tasca

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CERTIFICATE OF SERVICE

I certify that on December 2, 2019, and pursuant to FRCP 5, a true copy of the foregoing **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S CLASS ACTION COMPLAINT** was filed via the Court's CM/ECF System and electronically served on the following parties:

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